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New Technologies  
— New Justice

# NEW TECHNOLOGIES = NEW LAW

The rules of procedure of our time  
or a threat to human rights?

England and Wales



## A QUESTIONNAIRE FOR LAWYERS FROM DIFFERENT JURISDICTIONS

**The Helsinki Foundation for Human Rights and the Clifford Chance Foundation are implementing the project *New technologies = new law. The rules of procedure of our time or a threat to human rights?*. The project aims to identify the main opportunities and threats associated with the increasing impact of new technologies and Artificial Intelligence on the justice system. This questionnaire is designed to explore the solutions existing in different countries and will provide a foundation for further research within the project.**

<b>Country</b>	England and Wales
<b>Date</b>	2 January 2021; complemented 12 February 2021
<b>Submitted by (name of the contact person)</b>	Jumani Robbins and Joseph Sherlock

<b>PRE-TRIAL PHASE</b>		
<b>1.</b>	Is it required to use any alternative forms of dispute resolution in the country where the Office operates, before a case is brought to court? Can such alternative forms (e.g. mediation, negotiations) be conducted online?	Yes, before starting a claim, a party must consider the rules governing pre-action conduct, known broadly as the "Pre-Action Protocols". As part of this, the parties should consider whether negotiation or some other form of alternative dispute resolution might enable them to settle their dispute without commencing proceedings. There are potentially serious consequences for both claimants and defendants failing to comply with the Pre-action Protocol. The Protocol is premised on dialogue and the sharing of information between the parties – this can be performed through any means deemed appropriate, including via online mediums.
<b>ACCESS TO COURTS AND NEW TECHNOLOGIES</b>		
<b>2.</b>	Is it possible to remotely participate in a court hearing in the country where the Office operates? If so, please indicate in what types of cases remote participation is possible, or what requirements entities must meet to be able to do so. Please also indicate which participants in the trial (parties, witnesses, experts, etc.) have the opportunity to participate remotely in a court hearing. Please specify if remote participation is mandatory or optional (at the request of the parties).	<p><b>Remote hearings prior to COVID-19</b></p> <p><i>Criminal</i></p> <p>In May 2009, a 'Virtual Court' pilot began for 12 months in two magistrates' courts in London and Kent covering 15 police stations. During the pilot, a defendant would appear in a magistrates' court for their first hearing by means of a secure video link while remaining physically located in the police station where they were charged. Defence representation was either provided at the police station or in court. Other courtroom practitioners remained located in court.<sup>1</sup></p>

<sup>1</sup> Ministry of Justice, 'Virtual Court pilot: Outcome evaluation', December 2010, p. iii, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/193633/virtual-courts-pilot-outcome-evaluation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/193633/virtual-courts-pilot-outcome-evaluation.pdf) [accessed 4 December 2020].

		<p>As of October 2017, some remand, case management and sentencing hearings are conducted via video links with police stations or prisons.<sup>2</sup></p> <p>In March 2019, the Lord Chief Justice of England and Wales submitted written evidence to the Parliament's Justice Select Committee to the effect that current proposals would permit fully video hearings to be conducted in the criminal courts, including, where appropriate, first hearings in a magistrates' court where the defendant is in custody.<sup>3</sup></p> <p>The Lord Chief Justice confirmed that trials will not be conducted by fully video hearing either in the Magistrates' Court or the Crown Court. The senior judiciary consider that the following types of hearing could be dealt with by fully video hearing in the Crown Court:</p> <ul style="list-style-type: none"><li>• Further case management hearings (this does not extend to compliance hearings);</li><li>• Bail applications;</li><li>• Legal argument, including dismissal applications and applications to stay cases for abuse of process;</li><li>• Ground rules hearings which govern how the evidence of young and other vulnerable witnesses is given;</li><li>• Pre-trial hearings to determine the admission of evidence of a complainant's previous sexual behaviour in a sexual assault trial; and</li><li>• Fitness to plead hearings, which relieve the need for psychiatrists to travel to court.</li></ul> <p>The senior judiciary will decide which types of cases can be heard by video. Judges and magistrates dealing with cases will decide whether to conduct</p>
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<sup>2</sup> The Guardian, 'Videolinks in court trials undermine justice system, says report', 23 October 2017, available at: <https://www.theguardian.com/law/2017/oct/23/videolinks-in-court-trials-undermine-justice-system-says-report> [accessed 4 December 2020].

<sup>3</sup> Lord Burnett of Maldon, Written evidence from The Right Honourable The Lord Burnett of Maldon, Lord Chief Justice of England and Wales, March 2019, available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/hmcts-court-and-tribunal-reforms/written/97862.html> [accessed 11 February 2021].

		<p>individual hearings using technology including video. The Lord Chief Justice noted that the judiciary must be provided with the papers to make such decisions well in advance of the hearing so that discretion is not compromised and, where appropriate, defendants may be brought to court.</p> <p>The Justice Select Committee noted that research on the use of video hearings and video links in the UK is limited, which raises questions as to their suitability for anything other than straightforward cases. The committee recommended that the Ministry of Justice commission independent research on video hearings, with a primary focus on justice outcomes, before making the use of video technology in the courts more widespread.<sup>4</sup> To our knowledge, this research has not been published.</p> <p><i>Civil</i></p> <p>Video hearings for the First-tier Tribunal (Tax Chamber) were piloted in March to July 2018 as part of a larger effort to transform and modernise the justice system.<sup>5</sup> Video hearings in this pilot consisted of an appellant, appearing via their own computer from home or from work; a representative from HMRC appearing from their office; and a judge sitting in an open courtroom. If the appellant had a representative, they were co-located with the appellant at their location or they appeared remotely from their office.<sup>6</sup></p> <p><i>Family</i></p> <p>As of 11 July 2019, further pilots had been launched in the Civil and Family Courts in Manchester and Birmingham.<sup>7</sup></p>
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<sup>4</sup> Justice Select Committee, Court and Tribunal reforms, paragraph 88, 30 October 2019, available at: <https://publications.parliament.uk/pa/cm201919/cmselect/cmjust/190/19006.htm#footnote-235> [accessed 11 February 2021].

<sup>5</sup> Dr Meredith Rossner and Ms. Martha McCurdy on behalf of the Ministry of Justice, 'Implementing Video hearings (Party-to-State): A Process Evaluation', 2018, p. 4, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/740275/Implementing\\_Video\\_Hearings\\_\\_web\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/740275/Implementing_Video_Hearings__web_.pdf) [accessed 3 December 2020].

<sup>6</sup> Ibid, p. 5.

<sup>7</sup> HM Courts and Tribunals Service, 'HMCTS reform update - Infrastructure and enabling services', 11 July 2019, available at: <https://www.gov.uk/guidance/hmcts-reform-update-infrastructure-and-enabling-services> [accessed 3 December 2020].

		<p><b>Remote hearings guidance issued in response to COVID-19</b></p> <p>HM Courts and Tribunals Service ("HMCTS") data shows that the numbers of cases heard daily in England and Wales using audio and video technology increased from fewer than 1,000 in the last week of March 2020 to approximately 3,000 by mid-April.<sup>8</sup></p> <p><i>Civil</i></p> <p>It is possible to participate remotely in civil hearings of all kinds, including trials, applications and those involving litigants in person. Remote hearings take place in the County Court, High Court and Court of Appeal (Civil Division), including the Business and Property Courts.<sup>9</sup> In July 2020, the courts and tribunals service held a webinar on the use of remote hearings which can be found <a href="#">here</a>.<sup>10</sup></p> <p><i>Optional or mandatory</i></p> <p>The judge, magistrates or panel will decide if a hearing will be conducted remotely or in person. In considering the suitability of video/audio, judges will consider the nature of the matters at stake during the hearing; any issues which arise from the use of video/audio technology, having regard to individuals' needs; and any issues around public access to or participation in the hearing.<sup>11</sup></p> <p><i>Recording</i></p>
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<sup>8</sup> House of Commons Justice Select Committee, 'Technology and the courts', para. 39, available at: <https://publications.parliament.uk/pa/cm5801/cmselect/cmjust/519/51907.htm> [accessed 4 December 2020].

<sup>9</sup> Judiciary of England and Wales, 'Protocol Regarding Remote Hearings', p. 1 para. 1, available at: [https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil\\_GenerallyApplicableVersion.f-amend-26\\_03\\_20-1-1-1.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil_GenerallyApplicableVersion.f-amend-26_03_20-1-1-1.pdf) [accessed 9 November 2020].

<sup>10</sup> HM Courts and Tribunals Service, 'HMCTS online event, 15 July 2020: Use of remote hearings to maintain justice during the coronavirus outbreak', 16 July 2020, available at: <https://www.gov.uk/guidance/hmcts-online-event-15-july-2020-use-of-remote-hearings-to-maintain-justice-during-the-coronavirus-outbreak> [accessed 4 December 2020].

<sup>11</sup> HM Courts & Tribunals Service, 'HMCTS Reform Online Event: Use of remote hearings to maintain justice during the coronavirus outbreak webinar Q&A', 15 July 2020, p. 16, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/924287/HMCT404\\_Q\\_A\\_webinars\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/924287/HMCT404_Q_A_webinars_.pdf) [accessed 4 December 2020].

		<p>Civil Procedure Rules ("CPR") Part 39.9 states that: “[a]t any hearing, whether in the High Court or the County Court, the proceedings will be tape recorded or digitally recorded unless the judge directs otherwise” and that “[n]o party or member of the public may use unofficial recording equipment in any court or judge’s room without the permission of the court”.<sup>12</sup></p> <p><i>Public or private hearings</i></p> <p>CPR Part 39.2(3)(g) provides that hearings can be held in private if the court is satisfied that it is “necessary to secure the proper administration of justice”. In this case, CPR Part 39.2(5) requires that a copy of the court’s order must be published on <a href="http://www.judiciary.uk">www.judiciary.uk</a>, unless otherwise directed by the court. Non-parties may apply to attend the hearing and make submissions or apply to set aside or vary the order.</p> <p>A new Practice Direction (part of the CPR guidance, and referred to by way of the initialism "PD" hereinafter) 51Y entitled 'Video or Audio Hearings During Coronavirus Pandemic'<sup>13</sup> came into force on 25 March 2020, and will cease to have effect on the date that the Coronavirus Act 2020 ceases to have effect, in accordance with Section 89 of the Coronavirus Act.<sup>14</sup> It provides that: “where the court directs that proceedings are to be conducted wholly as video or audio proceedings and it is not practicable for the hearing to be broadcast in a court building, the court may direct that the hearing must take place in private where it is necessary to do so to secure the proper administration of justice”.</p> <p>Remote hearings should, so far as possible, still be public hearings. This can be achieved in a number of ways: (a) one person (whether judge, clerk or official) relaying the audio and (if available) video of the hearing to an open court room;</p>
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<sup>12</sup> Civil Procedure Rules, 'Part 39 – Miscellaneous Provisions Relating to Hearings', available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part39> [accessed 21 December 2020]. NB: all references to the Civil Procedure Rules (CPR) are available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules>.

<sup>13</sup> Civil Procedure Rules, 'Practice Direction 51Y', available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51y-video-or-audio-hearings-during-coronavirus-pandemic> [accessed 9 November 2020].

<sup>14</sup> Coronavirus Act 2020, available at: <https://www.legislation.gov.uk/ukpga/2020/7/section/89/enacted> [accessed 9 November].

		<p>(b) allowing a media representative to log in to the remote hearing; and/or (c) live streaming of the hearing over the internet.<sup>15</sup></p> <p>Unless the court has ordered that the hearing will take place in private, remote hearings are like traditional hearings in that they are accessible to the public. The most common mechanism for making remote hearings public is that a member of the public or press may request details from the court to join the hearing.</p>
3.	If you have answered question 2 in the affirmative, please indicate whether the location of a person remotely attending a court hearing is legally regulated. If so, please indicate specific requirements.	Authors could not find any specific regulations on the location of the person remotely attending.
4.	If you have answered question 2 in the affirmative, please indicate whether the remote participation takes the form of a video conference.	Yes (please see the answer to question 5 below).
5.	If you have answered question 4 in the affirmative, please indicate what video conferencing platform is used. Is it a commonly available platform (such as Skype, Zoom, MS Teams), or is it a platform specifically developed for the courts?	<p><b>Remote hearings guidance prior to COVID-19</b></p> <p>If a hearing takes place by video, it should be held on one of the following platforms:<sup>16</sup></p> <ul style="list-style-type: none"> <li>• Cloud Video Platform (government guidance on how to use the platform can be found here<sup>17</sup>);</li> <li>• Video Hearing Service;</li> <li>• Microsoft Teams; or</li> <li>• Skype for Business.</li> </ul>

<sup>15</sup> Judiciary of England and Wales, 'Protocol Regarding Remote Hearings', para. 8, p. 2, available at: [https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil.GenerallyApplicableVersion.f-amend-26\\_03\\_20-1-1-1.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil.GenerallyApplicableVersion.f-amend-26_03_20-1-1-1.pdf) [accessed 9 November 2020].

<sup>16</sup> UK Government website, 'Guidance: What to expect when joining a telephone or video hearing', available at: <https://www.gov.uk/guidance/what-to-expect-when-joining-a-telephone-or-video-hearing#our-telephone-and-video-hearing-platforms> [accessed 9 November 2020].

<sup>17</sup> HM Courts & Tribunals Service, 30 October 2020, available at: <https://www.gov.uk/government/publications/how-to-join-a-cloud-video-platform-cvp-hearing/how-to-join-cloud-video-platform-cvp-for-a-video-hearing> [accessed 10 November 2020].

		<p><b>Remote hearings guidance issued in response to COVID-19</b></p> <p>The 'Protocol regarding Remote Hearings', published 26 March 2020, states that "available methods for remote hearings include (non-exhaustively) BT conference call; Skype for Business; court video link; BT MeetMe; Zoom and ordinary telephone call. But any communication method open to the participants can be considered if appropriate".<sup>18</sup></p>
6.	<p>If it is possible to participate remotely in a court hearing in a form other than a video conference (e.g. via an audio link or a telephone call), please indicate the form(s) available.</p>	<p><i>Telephone hearings</i><sup>19</sup></p> <p>The courts can order that an application, or part of an application, be dealt with in a telephone hearing. The court's general case management powers in CPR 3.1 allow it to hold a hearing, or receive evidence, by telephone or by using any other method of direct oral communication (CPR 3.1(2)(d)). Telephone hearings are increasingly used for shorter hearings dealing with procedural or administrative matters. PD 23A.6.1 to 6.13 set out specific rules on telephone hearings. There is a presumption that allocation hearings, listing hearings, interim applications, case management conferences and pre-trial reviews with a time estimate of no more than one hour will be conducted by telephone, unless the court orders otherwise.</p> <p>Since 1 April 2011, the following providers have been approved for facilitating telephone hearings: BT Legal Hearings; Legal Connect; Kidatu; and Arkadin.</p> <p><b>Remote hearings guidance issued in response to COVID-19</b></p>

<sup>18</sup> Judiciary of England and Wales, 'Protocol Regarding Remote Hearings,' page 2 para 13, available at: [https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil\\_GenerallyApplicableVersion.f-amend-26\\_03\\_20-1-1-1.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil_GenerallyApplicableVersion.f-amend-26_03_20-1-1-1.pdf) [accessed 9 November 2020].

<sup>19</sup> Practical Law, 'Telephone Hearings', available at: [https://uk.practicallaw.thomsonreuters.com/2-241-8057?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/2-241-8057?transitionType=Default&contextData=(sc.Default)&firstPage=true) [accessed 3 December 2020].

		The government provides guidance on how to join court hearings by video call or phone. <sup>20</sup> This information is provided in the directions given by the court.
7.	When remote participation is possible, please indicate if all remote participants can be watched during the entire duration of a court hearing.	<p>The hearing will be recorded by the judge’s clerk, a court official or by the judge, if technically possible, unless a recording has been dispensed with under CPR Part 39.9(1). The parties and their legal representatives are not permitted to record the hearing.</p> <p>The hearing can be made open to the public, if technically possible, either by the judge(s) or the clerk logging in to the hearing in a public court room and making the hearing audible in that court room, or by other methods outlined in Question 2 above.</p> <p>In the exceptional circumstances presented by the COVID-19 pandemic, the impossibility of public access should not normally prevent a remote hearing taking place. If any party submits that it should not take place remotely given the circumstances of the specific case, that party should make submissions to that effect to the judge.<sup>21</sup></p>
8.	When remote participation is possible, please indicate how confidential discussions between the attorneys and the parties can be carried out.	<p><b>Remote hearings prior to COVID-19</b></p> <p>In the Virtual Court pilot referred to in question 2, a secure video link was provided for communication between police station and court, both for hearings and to allow confidential communication between defendants and their legal representatives if required.<sup>22</sup></p>

<sup>20</sup> HM Courts & Tribunals Service, 27 March 2020, available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/876566/Guide\\_on\\_joining\\_court\\_hearings\\_by\\_video\\_call\\_or\\_phone\\_27\\_March\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876566/Guide_on_joining_court_hearings_by_video_call_or_phone_27_March_2020.pdf) [accessed 10 November 2020].

<sup>21</sup> Judiciary of England and Wales, 'Protocol Regarding Remote Hearings', para. 22, p. 3, available at: [https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil\\_GenerallyApplicableVersion.f-amend-26\\_03\\_20-1-1-1.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil_GenerallyApplicableVersion.f-amend-26_03_20-1-1-1.pdf) [accessed 9 November 2020].

<sup>22</sup> Ministry of Justice, 'Virtual Court pilot: Outcome evaluation', December 2020, p. 1, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/193633/virtual-courts-pilot-outcome-evaluation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/193633/virtual-courts-pilot-outcome-evaluation.pdf) [accessed 4 December 2020].

		<p>Other than this example, we have not been able to identify information relating to the wider practice adopted by the courts prior to COVID-19.</p> <p><b>Remote hearings in response to COVID-19</b></p> <p>The courts are working around this issue by allowing users to leave the hearing, with the permission of the judge, to have these conversations by phone. The bespoke Video Hearing Service has functionality to enable these private conversations. Following the phone conversation, users can re-join when they are ready. Note that this guidance is temporary in light of the pandemic.<sup>23</sup></p>
<p><b>9.</b></p>	<p>Please indicate how it is possible to submit documents while remotely attending a court hearing.</p>	<p>The parties should, if necessary, prepare an electronic bundle of documents and an electronic bundle of authorities for each remote hearing. Each electronic bundle should be indexed and paginated and should be provided to the judge's clerk, court official or to the judge (if no official is available), and to all other representatives and parties well in advance of the hearing. Electronic bundles should contain only documents and authorities that are essential to the remote hearing.<sup>24</sup></p> <p>Electronic bundles can be prepared in .pdf or another format. They must be filed on CE-file (if available) or sent to the court by link to an online data room (preferred, please see Question 10 below) or by e-mail.<sup>25</sup> Email or delivery to the court on a USB stick is also permitted.</p>

<sup>23</sup> HM Courts & Tribunals Service, 'HMCTS Reform Online Event: Use of remote hearings to maintain justice during the coronavirus outbreak webinar Q&A', 15 July 2020, p. 3, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/924287/HMCT404\\_Q\\_A\\_webinars\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/924287/HMCT404_Q_A_webinars_.pdf) [accessed 4 December 2020].

<sup>24</sup> Judiciary of England and Wales, 'Protocol Regarding Remote Hearings', para. 24, p. 4, available at: [https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil\\_GenerallyApplicableVersion.f-amend-26\\_03\\_20-1-1-1.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil_GenerallyApplicableVersion.f-amend-26_03_20-1-1-1.pdf) [accessed 9 November 2020].

<sup>25</sup> Ibid., para. 26, p. 4.

<p><b>10.</b></p>	<p>Is it possible to submit pleadings electronically in the country where the Office operates? If so, please indicate in what types of cases pleadings can be submitted electronically.</p>	<p>Courts Electronic Filing System ("<b>CE-File</b>") enables parties to issue claims and file documents electronically, and to pay court fees online, 24 hours a day, all year round.<sup>26</sup></p> <p>Electronic working has been compulsory for professional users in the:<sup>27</sup></p> <ul style="list-style-type: none"> <li>• Business and Property Courts ("<b>B&amp;PCs</b>") in the Rolls Building in London since 25 April 2017 (Chancery Division of the High Court; Commercial Court; Technology and Construction Court; Circuit Commercial Court, Admiralty Court);</li> <li>• B&amp;PCs nationwide from 30 April 2019;</li> <li>• Queen's Bench Division ("<b>QBD</b>") from 1 July 2019; and</li> <li>• Court Costs Office from 20 January 2020.</li> </ul> <p>Although parties who are not legally represented may use the system, they are not compelled to do so (CPR PD 51O.2.2).<sup>28</sup></p> <p>Generally, CE-File is not available in relations to appeals, however:<sup>29</sup></p> <ul style="list-style-type: none"> <li>• CE-File is available for appeals within the QBD and Chancery Division from a master to a judge;</li> <li>• Where the use of CE-File has not been mandated in a particular court, CE-File can only be used if the case has been digitised (presumably in the lower court) and already appears on CE-File; and</li> <li>• CE-File should be used by professional users when filing an appeal from a County Court Circuit Judge to the Queen's Bench Division under "High Court appeals".</li> </ul>
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<sup>26</sup> Civil Procedure Rules, 'Practice Direction 51O.2.1', available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51o-the-electronic-working-pilot-scheme> [accessed 10 November 2020].

<sup>27</sup> Practical Law, 'Electronic working and the Courts Electronic Filing system, Practical Law UK Practice Note 8-620-2125', available at: [https://uk.practicallaw.thomsonreuters.com/8-620-2125?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/8-620-2125?transitionType=Default&contextData=(sc.Default)&firstPage=true) [accessed 10 November 2020].

<sup>28</sup> Civil Procedure Rules, 'Practice Direction 51O.2.2(2)(b)', available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51o-the-electronic-working-pilot-scheme> [accessed 10 November 2020].

<sup>29</sup> Ibid.

		<p>MyHMCTS is an online case management tool for solicitors and other legal professionals managed by HMCTS. It allows you to submit, pay for and manage online case applications for:</p> <ul style="list-style-type: none"> <li>• Probate;</li> <li>• Divorce;</li> <li>• Financial remedy;</li> <li>• Family public law order; and</li> <li>• Immigration and asylum appeals.<sup>30</sup></li> </ul>
	<p><b>11.</b> If you have answered question 10 in the affirmative, please indicate how the pleadings are submitted (e.g. by e-mail or via a special platform), what additional formal requirements are imposed on the pleadings and how the identity of the person submitting a pleading is verified to prevent impersonation of a party to the proceedings.</p>	<p>Where a bundle is required to be filed with the court in connection with case or cost management or other directions, a party may file the bundle using CE-File (PD 51O.11.1).<sup>31</sup></p> <p>The trial bundle must be filed with the court in paper format (PD 51O.13.1). If the court so orders, an electronic version of the trial bundle must also be filed in accordance with the requirements of PD 51O.10.3 (trial bundles).<sup>32</sup></p> <p>Under PD51O.16, persons permitted to obtain copies of documents may request electronic copies of the documents to be sent by the Court by e-mail to an address supplied by such persons.</p> <p>Under PD51O.17, HMCTS will take appropriate measures to ensure the security of information communicated or stored electronically. Parties using CE-File may need to:</p> <p>(a) enter an email address as their customer identification and/or password;</p> <p>(b) provide personal information for identification purposes; and</p>

<sup>30</sup> HM Courts & Tribunals Service, 'MyHMCTS: online case management for legal professionals', 22 October 2020, available at: <https://www.gov.uk/guidance/myhmcts-online-case-management-for-legal-professionals> [accessed 10 November 2020].

<sup>31</sup> Civil Procedure Rules, 'Practice Direction 51O.11.1', available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51o-the-electronic-working-pilot-scheme#13.1> [accessed 10 November 2020].

<sup>32</sup> Civil Procedure Rules, 'Practice Direction 51O.13.1; 51O.13.3'.

	(c) comply with any other security measures that may be required before using CE-File. <sup>33</sup>
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<p><b>12.</b></p>	<p>Please indicate if the parties (or their attorneys) have remote access to the case file in the country where the Office operates? If so, please indicate the type of remote access.</p>	<p>An electronic bundle will almost always be necessary for a remote hearing. Parties should be able to access CE-File, as discussed in questions 10 and 12, but the Bar Council states that this may not always be possible during a hearing, and if the connection drops or the CE-File is unavailable, the hearing may be adjourned. In addition, not all courts use CE-File.<sup>34</sup></p> <p>The Judiciary has produced a <u>General Guidance on PDF Bundles</u> which includes the principles that bundling should follow and the delivering of ebundles. Guidance from the Supreme Court can be found <u>here</u>.</p> <p><i>Criminal</i></p> <p>The <u>Crown Court Digital Case System</u> is a web-based platform that allows users to access, prepare and present information on a case. Each case has its own digital file, and users must be registered to gain access to it.<sup>35</sup> Information can be shared with court staff, the judge and the prosecution or defence, and all parties can collaborate on documents and the bundle.<sup>36</sup></p> <p><b>Remote hearings in response to COVID-19</b></p> <p><i>Family</i></p>
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<sup>33</sup> Civil Procedure Rules, 'Practice Direction 51O.17', available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51o-the-electronic-working-pilot-scheme#13.1> [accessed 10 November 2020].

<sup>34</sup> The Bar Council, 'Ebundles', April 2020, available at: <https://www.barcouncilethics.co.uk/wp-content/uploads/2020/04/Ebundles-guidance-LATEST.pdf> [accessed 21 December 2020].

<sup>35</sup> The Bar Council, 'Use of the Crown Court Digital Case System', March 2018, p. 5, available at: <http://www.barcouncilethics.co.uk/wp-content/uploads/2018/03/Use-of-the-Crown-Court-Digital-Case-System-pdf-2.pdf> [accessed 21 December 2020].

<sup>36</sup> Gov.uk, 'Crown Court Digital Case System Guidance', 23 May 2018, available at: <https://www.gov.uk/guidance/crown-court-digital-case-system-guidance> [accessed 21 December 2020].

		<p>The Protocol For Remote Hearings in the Family Court and Family Division of the High Court sets out ebundle requirements in <u>paragraphs 20-22</u>.<sup>37</sup> No later than the day before the remote hearing, the lead party must prepare a PDF bundle of documents and send this to the court and all parties. Where all the parties are unrepresented, none of them are obliged to prepare a bundle, unless the court tells you to. If one party is not represented and the other party is, the represented party’s lawyer will create a bundle.</p> <p><i>Civil</i></p> <p>Paragraphs <u>24-26</u> of the Protocol regarding Remote Hearings identifies the process for electronic bundles in civil cases.<sup>38</sup></p>
<p><b>ARTIFICIAL INTELLIGENCE AND COURTS</b></p>		
<p><b>13.</b></p>	<p>Do the courts in the country where the Office operates use any tools that incorporate Artificial Intelligence? If so, please indicate whether such tools are used exclusively for back-office purposes or (also) in external contacts (e.g. chatbots)?</p>	<p>Lord Burnett of Maldon, the current Lord Chief Justice, has established a new AI advisory body, with the aim of ensuring that the Judiciary of England and Wales is fully informed about developments in artificial intelligence (AI). Professor Richard Susskind, President of the Society for Computers &amp; Law, has been named chair of the body.<sup>39</sup></p> <p><i>Machine-learning AI</i></p> <p>Machine-learning AI is reportedly used to facilitate document review for disclosure. This is based on algorithms trained by subject matter experts in</p>

<sup>37</sup> Courts and Tribunals Judiciary, 'Protocol For Remote Hearings in the Family Court and Family Division of the High Court', paras. 20-22, p. 45-46, available at: <https://www.judiciary.uk/wp-content/uploads/2020/04/The-Remote-Access-Family-Court-Version-4-Final-16.04.20.pdf> [accessed 21 December 2020].

<sup>38</sup> Judiciary of England and Wales, 'Protocol Regarding Remote Hearings', para. 24-26, p. 4, available at: [https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil\\_GenerallyApplicableVersion.f-amend-26\\_03\\_20-1-1-1.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil_GenerallyApplicableVersion.f-amend-26_03_20-1-1-1.pdf) [accessed 21 December 2020].

<sup>39</sup> Courts and Tribunals Judiciary, 'Lord Chief Justice sets up advisory group on Artificial Intelligence', 4 March 2019, available at: <https://www.judiciary.uk/announcements/lord-chief-justice-sets-up-advisory-group-on-artificial-intelligence/> [accessed 10 November 2020].

		<p>the legal team, and enables litigators to find relevant documents faster, without reviewing the entire dataset.</p> <p>The use of predictive coding (a type of machine-learning AI), to facilitate the review and production of large datasets for the disclosure process,<sup>40</sup> was endorsed by the High Court in the 2016 decisions <i>Pyrrho Investments Ltd v MWB Property Ltd</i> and <i>David Brown v BCA Trading</i>.<sup>41</sup></p> <p>Electronic discovery, commonly known as e-discovery, is the process by which electronic data is identified, collected and produced via a machine learning process, in response to a request for evidence in a civil or criminal court case. Technology-assisted review, also known as predictive coding, uses AI to ‘learn’ from human reviewers which documents are likely to be relevant. E-discovery lasts until documents are presented in court, should they go to trial. Lawyers from both sides of a case will define the scope of e-discovery, identify and preserve the relevant electronically stored information, and make e-discovery requests and challenges of the opposing side. Once the limitations are set, electronically stored information is collected, analysed and formatted for use in court.<sup>42</sup> PD 31B requires that the parties to the litigation must discuss how e-disclosure should be carried out at an early stage in the proceedings, before the first case-management conference.<sup>43</sup></p> <p><i>Predictive AI</i></p>
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<sup>40</sup> Reuters, 'Dispute Resolution Blog', 28 March 2019, available at: <http://disputeresolutionblog.practicallaw.com/artificial-intelligence-and-a-national-digital-case-law-database-could-revolutionise-uk-litigation/> [accessed 21 December 2020].

<sup>41</sup> Law Gazette, 'Artificial intelligence in the courtroom', 9 April 2018, available at: <https://www.lawgazette.co.uk/practice-points/artificial-intelligence-in-the-courtroom-/5065545.article> [accessed 17 December 2020].

<sup>42</sup> All About Law, 'The growth of e-discovery', 3 May 2019, available at: <https://www.allaboutlaw.co.uk/commercial-awareness/commercial-insights/the-growth-of-e-discovery-> [accessed 4 December 2020].

<sup>43</sup> Civil Procedure Rules, 'Practice Direction 31B – Disclosure of Electronic Documents', available at: [https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part31/pd\\_part31b#6.1](https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part31/pd_part31b#6.1) [accessed 4 December 2020].

		<p>AI has been used to replicate judges' reasoning in European Court of Human Rights judgments. The AI could predict the outcome of cases with a 79% success rate. Use of predictive AI for UK cases is uncommon.<sup>44</sup></p> <p>Although not specifically used by the courts of England and Wales, it is of note that the British and Irish Legal Information Institute (BAILII) has granted academics at Oxford University bulk access to its database of 400,000 judgements for research purposes. BAILII posts judgements under a contract with the Ministry of Justice, and previously refused to allow its database to be downloaded in bulk or scraped by software, due to fears it would enable the development of AI systems for predicting the outcome of cases on a judge-by-judge basis.</p> <p>Access to the judgements will enable researchers to explore the application of AI to the analysis of a very large body of case law. The chair of BAILII's trustees said that the findings of the University of Oxford will guide BAILII in "developing a policy on data sharing for large scale data analysis which aligns with emerging policy at HMCTS and the Ministry of Justice."<sup>45</sup></p> <p><i>Analytical AI</i></p> <p>Premonition is software which uses AI to analyse various data, including the success rate of legal submissions and of lawyers against different judges. Users of Premonition reportedly include general counsel, law firms and hedge fund analysts.<sup>46</sup></p>
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<sup>44</sup> Law Gazette, 'Artificial intelligence in the courtroom', 9 April 2018, available at: <https://www.lawgazette.co.uk/practice-points/artificial-intelligence-in-the-courtroom-5065545.article> [accessed 17 December 2020] and University College London, 'How artificial intelligence ended up in court', 14 February 2020, available at: <https://www.ucl.ac.uk/engineering/case-studies/2020/feb/how-artificial-intelligence-ended-court> [accessed 21 December 2020].

<sup>45</sup> UK Authority, 'Legal judgements opened up for AI analysis', 15 December 2020, available at: <https://www.ukauthority.com/articles/legal-judgments-opened-up-for-ai-analysis/> [accessed 21 December 2020].

<sup>46</sup> Law Gazette, 'Artificial intelligence in the courtroom', 9 April 2018, available at: <https://www.lawgazette.co.uk/practice-points/artificial-intelligence-in-the-courtroom-5065545.article> [accessed 17 December 2020].

<p><b>14.</b></p>	<p>Does the justice system in the country where the Office operates use Artificial Intelligence tools to identify groups of individuals who are more likely to commit a given type of crime (e.g. tax offences)?</p>	<p>The Department for Work and Pensions ("<b>DWP</b>") has rolled out and tested AI to automate claims processing and fight fraud within DWP. DWP uses AI to identify large-scale corruption of the benefit and welfare program to stop criminal gangs who are responsible for extremely large losses. The algorithms look for patterns in claims such as the same phone number or applications written in the same style. Once a claim is flagged as suspicious, a human investigator takes over to determine if the claim is fraudulent.<sup>47</sup></p> <p><i>Police – Use of algorithms in the justice system:</i></p> <p><b>Durham Police</b> has used the Harm Assessment Risk Tool algorithm since 2017, a machine learning system which analyses 34 categories of data, including a person's age, gender and offending history, to rate people as a low, moderate or high risk of reoffending within a two-year period. Custody officers use this information to decide whether to release a suspect, keep them in the cell, or make them eligible for a local rehabilitation programme called Checkpoint. The tool is not used to determine bail or sentencing decisions.<sup>48</sup></p> <p>In March 2018, it was reported that the algorithm had been altered due to concerns that it could discriminate against people from poorer areas. A review of its operation also found large discrepancies between human predictions and those made by the system.<sup>49</sup></p>
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<sup>47</sup> Bernard Marr, 'How the UK Government Uses Artificial Intelligence to Identify Welfare and State Benefits Fraud', *Forbes*, 29 October 2018, available at: <https://www.forbes.com/sites/bernardmarr/2018/10/29/how-the-uk-government-uses-artificial-intelligence-to-identify-welfare-and-state-benefits-fraud/?sh=76acb8e840cb> [accessed 10 November 2020].

<sup>48</sup> The Law Society, 'Technology and the Law Policy Commission – Algorithms in the Justice System', 27 June 2019, available at: <https://www.lawsociety.org.uk/campaigns/lawtech/guides/public-policy-technology-and-law-commission> [accessed 3 December 2020].

<sup>49</sup> Wired, 'UK police are using AI to inform custodial decisions – but it could be discriminating against the poor', 1 March 2018, available at: <https://www.wired.co.uk/article/police-ai-uk-durham-hart-checkpoint-algorithm-edit> [accessed 4 December 2020].

		<p><b>Kent Police</b> use the PredPol programme, which informs them of crime hotspots. PrePol uses artificial intelligence to learn crime patterns from historical records. The Kent system was trained on five years of crime data, and the algorithm is now updated daily with the force's most recent three years of records. After crunching the data, PredPol returns a daily list of 180 hotspots, each 500 ft by 500 ft, where it predicts the crime risk is high.<sup>50</sup></p> <p><b>South Wales Police</b> has used facial recognition technology to automatically detect faces in an image or video and compare with a database of facial images to identify wanted criminals since 2017.<sup>51</sup> They have trialled it at large events such as boxing matches, the Champions League final and rugby games.</p> <p>The Court of Appeal heard a judicial review challenge and ruled that South Wales Police's use of automatic facial recognition technology breached:</p> <ul style="list-style-type: none"><li>• Privacy rights under Article 8 of the European Convention on Human Rights on the basis that there was "too broad a discretion" left to police offers in applying the technology and;</li><li>• Public sector duty of equality by failing to properly investigate whether the facial recognition algorithms were biased in terms of race or gender.<sup>52</sup></li></ul> <p>The <b>Metropolitan Police</b> currently uses NEC's NeoFace Live Facial Recognition technology to take images and compare them to images of</p>
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<sup>50</sup> The Law Society, 'Technology and the Law Policy Commission – Algorithms in the Justice System', 27 June 2019, available at: <https://www.lawsociety.org.uk/campaigns/lawtech/guides/public-policy-technology-and-law-commission> [accessed 3 December 2020].

<sup>51</sup> Ibid.

<sup>52</sup> The Guardian, 'South Wales police lose landmark facial recognition case', 11 August 2020, available at: <https://www.theguardian.com/technology/2020/aug/11/south-wales-police-lose-landmark-facial-recognition-case> [accessed 4 December 2020].

		<p>people on the recognition system's watchlist.<sup>53</sup> It measures the structure of each face, including distance between eyes, nose, mouth and jaw to create a facial template. If there is a match on the watchlist, the technology sends an alert to officers on the scene. An officer then compares the camera image to the person they see and decides whether to speak to the person or not. The system keeps images for up to 31 days, or if an arrest is made, until any investigation or judicial process is concluded. The biometric data of those who do not cause an alert is automatically and immediately deleted.</p> <p>It has been reported that <b>Leicestershire Police</b> trialled the NEC software in 2014 to look for approximately 90,000 'known offenders' at the Download festival in June 2015.<sup>54</sup></p>
<p><b>15.</b></p>	<p>Please indicate if in the country where the Office operates the parties have general access to tools facilitating the submission of a pleading in simple cases (e.g. by completing an online form available on the court's website)?<sup>55</sup></p>	<p>As outlined in response to question 10, CE-File allows registered users to file documents 24 hours a day, including weekends and bank holidays. This enables claim forms to be issued and documents to be filed in electronic format out of normal court office opening hours.</p> <p>CE-File can be used by a legal professional on behalf of a client or by an individual who is not legally represented i.e. a 'Litigant in Person' in the:</p> <ul style="list-style-type: none"> <li>• Business and Property Courts;</li> <li>• Senior Courts Costs Office;</li> <li>• Queen's Bench Division; or</li> <li>• Senior Courts Costs Office.</li> </ul>

<sup>53</sup> Metropolitan Police, 'Live Facial Recognition', available at: <https://www.met.police.uk/advice/advice-and-information/facial-recognition/live-facial-recognition/> [accessed 4 December 2020].

<sup>54</sup> Cloisters Chambers, 'In the Matter of Automated Data Processing in Government Decision Making', 7 September 2019, p. 7, available at: <https://482pe539799u3ynseg2h11r3-wpengine.netdna-ssl.com/wp-content/uploads/2019/10/Open-opinion-pdf-version-1.pdf> [accessed 21 December 2020].

<sup>55</sup> Drafter's note: The response outlined in question 10 is applicable to this question.

		<p>'Money Claim Online' allows someone who is owed money but who will not be paid to claim their money back: <a href="http://www.moneyclaim.gov.uk">www.moneyclaim.gov.uk</a>.</p> <p>There is an online service for people who want to claim or respond to a claim for rent or mortgage arrears: <a href="http://www.possessionclaim.gov.uk/pcol">www.possessionclaim.gov.uk/pcol</a>.</p>
<p><b>16.</b></p>	<p>Has the justice system in the country where the Office operates automated a certain range of its functions (e.g. certain administrative activities)? If so, please indicate what technologies are used for automation purposes</p>	<p><b>Law firms</b> Document automation tools like Contract Express or Drafting Assistant have allowed law firms to be more efficient by replicating and modifying exemplar documents with ease.<sup>56</sup></p> <p><b>Use of automated systems in government</b></p> <p><i>EU Settlement Scheme</i> EU nationals who have been in the UK continuously for five years are eligible for settled status to remain in the UK. To determine eligibility, the Home Office uses an automated decision-making process which analyses data from the Department of Work &amp; Pensions and the applicant's tax records.</p> <p>However, records relating to Child Benefit and Child Tax Credit are not interrogated. As the vast majority of Child Benefit recipients are women, and women are more likely to be in receipt of Child Tax Credits. Women may be at a higher risk of being deemed incorrectly by the Home Office's algorithm as not having the relevant period of continuous residency (which in turn will impact on their immigration status) because data is being assessed which does not best reflect them.<sup>57</sup> The Settlement Scheme could therefore lead to indirect sex discrimination contrary to section 19 of the Equality Act 2010. There may also be implications for disabled applicants</p>

<sup>56</sup> Thomson Reuters, 'Artificial intelligence will threaten most jobs at some point soon—and new jobs will emerge', available at: <https://blogs.thomsonreuters.com/legal-uk/2018/07/11/artificial-intelligence-will-threaten-most-jobs-at-some-point-soon-and-new-jobs-will-emerge/> [accessed 21 December 2020].

<sup>57</sup> AI Law, 'Government Automated-Decision Making', Autumn 2019, available at: <https://ai-lawhub.com/april-2019/> [accessed 21 December 2020].

		<p>who need to provide additional information as part of the settled status process.<sup>58</sup></p> <p><i>Risk-Based Verification (RBV)</i></p> <p>Local authorities are required under legislation to determine an individual's eligibility for Housing Benefits and Council Tax Benefits. RBV is an algorithm used by local authorities since 2012 to identify fraudulent housing and council tax benefit applications. The software gives each applicant a risk-rating for fraud, which determines how much scrutiny their application receives.<sup>59</sup> Some local authorities use RBV, but there is no publicly available information which explains how such algorithms are deployed and on what basis. Due to the complete lack of transparency as to how RBV machine learning algorithms work, applicants are not able to satisfy themselves that they are not being discriminated against.<sup>60</sup></p>
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<sup>58</sup> The Legal Education Foundation, 'Government automated decision-making may breach equality laws, leading barristers warn', 30 October 2019, available at: <https://www.thelegaleducationfoundation.org/articles/government-automated-decision-making-may-breach-equality-laws-leading-barristers-warn> [accessed 21 December 2020].

<sup>59</sup> Cloisters Chambers, 'In the Matter of Automated Data Processing in Government Decision Making', 7 September 2019, p. 40, available at: <https://482pe539799u3ynseg2hl1r3-wpengine.netdna-ssl.com/wp-content/uploads/2019/10/Open-opinion-pdf-version-1.pdf> [accessed 21 December 2020].

<sup>60</sup> AI Law, 'Government Automated-Decision Making', Autumn 2019, available at: <https://ai-lawhub.com/april-2019/> [accessed 21 December 2020].

## ONLINE COURTS

<p><b>17.</b></p>	<p>Are there any court proceedings in the country where the Office operates that are entirely conducted online? If so, please indicate which types of proceedings are conducted online (e.g. small claims cases, family cases, etc.) and specify if the online mode of such proceedings is mandatory or optional (at the request of the parties).</p>	<p>In light of the COVID-19 pandemic, a number of cases have and will be completed by way of proceedings conducted entirely online: see the answers above, in particular in response to question 2, and the remote hearings guidance issued by Her Majesty's Courts &amp; Tribunals Service.<sup>61</sup></p> <p>However, to the best of the authors' knowledge, outside of the temporary and emergency measures put in place as a result of the pandemic, there are not yet any categories of court proceedings that are by default conducted entirely online. This is something that Her Majesty's Courts &amp; Tribunal Service has said it is working towards: "<i>In future, more cases will be progressed and resolved entirely online, without the need for a hearing. For example, it will allow those charged with some of the most straightforward, non-imprisonable offences (such as failure to produce a rail ticket) to visit GOV.UK [the British government website], have all the options clearly explained to them, accept a conviction and pay a set penalty instantly online without waiting for a magistrate to process their case.</i>"<sup>62</sup></p> <p>Notwithstanding the general position above, in certain cases it might be agreed on a case-by-case basis that the matter can be determined "on the papers" solely via documentation submitted by the parties to the court.</p>
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<sup>61</sup> HM Courts & Tribunals Service, 27 March 2020, available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/876566/Guide\\_on\\_joining\\_court\\_hearings\\_by\\_video\\_call\\_or\\_phone\\_27\\_March\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876566/Guide_on_joining_court_hearings_by_video_call_or_phone_27_March_2020.pdf); [https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil\\_GenerallyApplicableVersion.f-amend-26\\_03\\_20-1-1-1.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil_GenerallyApplicableVersion.f-amend-26_03_20-1-1-1.pdf) [accessed 3 January 2021]

<sup>62</sup> <https://insidehmcts.blog.gov.uk/2017/03/31/hmcts-improving-the-justice-system/>

18.	Are there any online courts (courts accessible only via the Internet, whose proceedings are conducted exclusively and entirely online) in the country where the Office operates? If so, please indicate the scope of jurisdiction of such courts.	To the best of the authors' knowledge, there is none.
19.	If you have answered question 17 or 18 in the affirmative, please indicate if appellate proceedings are also conducted online.	N/A
<b>PROCEDURAL GUARANTEES AND NEW TECHNOLOGIES</b>		
20.	If you have answered question 17 or 18 in the affirmative, please indicate whether the country where the Office operates has implemented any mechanisms aimed to grant legally required levels of the access to court to digitally excluded persons. Please indicate specified mechanisms (e.g. possibility of conducting the proceedings, otherwise held online, in traditional form due to justified request of the party).	N/A
21.	If you have answered question 17 or 18 in the affirmative, please indicate how the principle of open proceedings is ensured.	N/A
22.	If you have answered question 17 or 18 in the affirmative, please indicate how is the sensitive data from those proceedings being archived.	N/A
23.	Has the Court of the highest instance in the country where the Office operates produced any rulings on the standards of procedural fairness of the online proceedings?	To the best of the authors' knowledge, no.

24.	Are there any legal regulations in the country where the Office operates in place concerning the participation of persons deprived of liberty in online proceedings? In particular, are there any legal requirements concerning the surroundings and the conditions of the participation of the accused in online proceedings in order to avoid indirect infringements on the presumption of innocence rule?	To the best of the authors' knowledge, no.
25.	Is there any particular category of cases in country where the Office operates, that requires party to be physically present in the courtroom during the proceedings (e.g. pre-trial detention proceedings), despite basic admissibility of the online proceedings and online participation of the parties in those proceedings?	As noted above, outside of the temporary and emergency measures put in place as a result of the pandemic, there are not yet any categories of court proceedings that are by default conducted entirely online. Whilst some cases may be undertaken "on the papers", to the best of the authors' knowledge, there are no formal rules as to which cases require physical attendance by parties. When determining the suitability of a case to being determined on the papers, there will be scope for the parties to make submissions as to the need for physical attendance.
26.	Is the AI based software being used during the evidence proceedings in the country where the Office operates?	To the best of the authors' knowledge, no.
27.	Has the country where the Office operates implemented any specific legislation concerning the access to assigned counsel (legal aid counsel/public defender) in online proceedings?	To the best of the authors' knowledge, no.
28.	Are there any trainings dedicated to technical aspects of the participation in online proceedings being organized for judges, prosecutors and other legal professionals in the country where the Office operates?	Precise details regarding the training offered to the court participants listed are not publicly available. However, in a consultation paper authored by the Nuffield Family Justice Observatory, <sup>63</sup> a number of those consulted said that more IT training was needed in order to ensure the

<sup>63</sup> <https://www.judiciary.uk/wp-content/uploads/2020/05/remote-hearings-rapid-review.pdf>

		<p>proper administration of remote proceedings. See, for example, the comments of one judge, who said:</p> <p><i>"It is an unfortunate of my experience that since my appointment there has been a lack of training on IT. The current situation is illustrative of the continuing lack of training and support. We all received details of how to access Skype for Business. We were not offered any training for this but we managed to arrange our own training....I have not used Skype for Business with the Judges confidential address to conduct a hearing as I am concerned that my knowledge is not sufficient to do so effectively...I appreciate 'we are where we are' but I think lessons need to be learnt about the inadequacy of IT training for judges and about the lack of investment in IT and video facilities in courts."</i></p> <p>Another Judge stated that: <i>"[Technical capability] ... leads to a personal crisis in confidence when I cannot cope with technology and operate or understand equipment/resources available. The staff have been amazing but instruction on use of equipment is incompatible with social distancing and changes daily. Keeping up with what is allowed/ permissible, which seems to change daily...more technology training and access to suitable equipment when working from home is needed."</i></p> <p>It should be noted that this consultation was undertaken in the context of family courts, and a number of the response flagged that there was inconsistency of approach across the different courts – for instance, it was mentioned that High Court proceedings tended to be better resourced with judges having access to support from clerks who were able to help.</p>
<p><b>29.</b></p>	<p>Are new technologies used to alleviate the stress associated with participating in court proceedings that may potentially be experienced by vulnerable</p>	<p>Yes. In criminal cases, it is acknowledged that for some witness the process of giving evidence in court can be particularly difficult. Children under 18 years of age, victims of sexual offences and the most serious crimes,</p>

	<p>persons (e.g. victims of violent crimes, children) in the country where the Office operates? If so, please indicate how such technologies are used.</p>	<p>persistently targeted victims and people with communication difficulties are some examples of people who may need special help. These witnesses (described as vulnerable or intimidated), may be allowed to use special measures to help them give their evidence in the best possible way. In addition to non-technological measures (such as giving evidence in private), special measures that may be available are:</p> <ul style="list-style-type: none"> <li>• Giving evidence through a TV link: The witness can sit in a room outside the courtroom and give their evidence via a live television link to the courtroom. The witness will be able to see the courtroom and those in the courtroom can see the witness on a television screen;</li> <li>• Video recorded evidence: The witness' evidence is recorded and played to the court; and</li> <li>• Use of communication aids: This is when the witness needs to use an aid to communicate. For example, this could include anything from computers, voice synthesisers or symbol boards to toys, books or an alphabet board.</li> </ul> <p>In civil cases, it is possible to give evidence via video link pursuant to CPR 32.3. However, by virtue of the nature of such proceedings, this is usually for logistical reasons (such as the witness being outside of the country and unable to travel), rather than due to the vulnerability of the witness.</p>
<p><b>30.</b></p>	<p>Please indicate if any solutions are used in the country where the Office operates to adjust the digital tools for accessing courts to the needs of persons with disabilities, the elderly or those with difficulties in operating a computer. If yes, please specify these solutions.</p>	<p>To the best of the authors' knowledge, there is none.</p>

<b>31.</b>	Please indicate if in the country where the Office operates the parties have general access to guidebooks covering the technical and legal aspects of the participation in online proceedings.	<p>There are a variety of resources available in relation to participation in online proceedings, but this information tends to be scattered across various websites and not compiled in a structured or comprehensive way. See for example:</p> <ul style="list-style-type: none"> <li>• HMCTS Guide on Joining Court Hearings by Video Call or Phone<sup>64</sup></li> <li>• HMCTS guidance on "what to expect when joining a telephone or video hearing"<sup>65</sup></li> <li>• Upper Tribunal Immigration and Asylum Chamber Guidance Note on Video link hearings<sup>66</sup></li> <li>• CPS Legal Guidance on Live Links<sup>67</sup></li> </ul>
<b>32.</b>	Has the country where the Office operates implemented any separate legal procedures concerning the proceedings in case of the computer or the Internet malfunction on either the parties or the Court behalf?	To the best of the authors' knowledge, no.
<b>33.</b>	If you have answered question 32 in the affirmative, please indicate what are the actions taken to limit the possibility of parties deliberately obstructing the court proceedings (e.g. by intentionally disconnecting the Internet) without infringing on	N/A

<sup>64</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/876566/Guide\\_on\\_joining\\_court\\_hearings\\_by\\_video\\_call\\_or\\_phone\\_27\\_March\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876566/Guide_on_joining_court_hearings_by_video_call_or_phone_27_March_2020.pdf)

<sup>65</sup> <https://www.gov.uk/guidance/what-to-expect-when-joining-a-telephone-or-video-hearing>

<sup>66</sup> <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/Presidential+Guidance+note+2013+No+2+-+Video+link+hearings.pdf>

<sup>67</sup> <https://www.cps.gov.uk/legal-guidance/live-links>

	the parties rights in the case of genuine technical difficulties.	
<b>ADDITIONAL INFORMATION</b>		
<b>34.</b>	If in the country in which the Office operates, the judiciary uses new technologies in a form that has not yet been included in any of the above questions or answers, please indicate it.	N/A

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**New Technologies — New Justice** is a joint project of the Helsinki Foundation for Human Rights and Clifford Chance.

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In today's world, new technologies are present in virtually all spheres of life – and they are also becoming increasingly important for the modern justice system. The project seeks to examine the actual presence of new technologies in the justice system of Poland and around the world, as well as to identify the main risks associated with modern legal technologies and the most promising solutions to these risks. The advancing digitalisation of the justice system and the digital modernisation of the legal system is an inevitable consequence of the need to ensure that the legal system keeps up with the times. That is why the Helsinki Foundation for Human Rights and Clifford Chance work to identify solutions for improving the justice system to ensure that the rights and freedoms of individuals are not only respected but also exercised more easily.

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